IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2416 OF 1998

Halimabai w/o Dagadumiya
Maniyar (since deceased) through
her legal heir Mr.Mohammadsaheb
Sakinmiya Maniyar .. Petitioner.
Vs.
Mohammadali Abdul Rehman
Maniyar .. Respondent.

Mr.V.Z.Kankaria for the petitioner.
Mr.S.A.Rajeshirke i/b Mr.M.S.Karnik for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 31ST AUGUST, 2005

P.C.:

. This petition is directed against the orders dated 21.10.1993 and 22.10.1993 passed below Exhibit-26 and the application dated 21.10.1993 filed by the petitioner. Both these applications were filed in Civil Appeal No.221/1988 filed by the petitioners. The appeal was directed against the judgment and order dated 10.3.1998 passed by the Civil Judge Junior Division, Igatpuri in Suit No.62 of 1982. The suit was filed by the respondent-plaintiff for specific performance of the contract. The suit came to be dismissed on 22.10.1993. It is the claim of the respondent that pending their appeal there was compromise and in

pursuance thereof sale deed dated 16.8.1991 of the property in dispute was executed by the petitioner and since the prayer in the suit was satisfied by the execution of the sale deed he prayed for disposal of the appeal by filing application - Exhibit-26. On the said application the impugned order dated 21.10.1993 was passed. When the order below Exhibit-26 was passed, according to the petitioner, he was not given notice nor was he heard and in view thereof he filed the application dated 21.10.1993 for setting aside the said order and for restoration of the appeal to file. That application came to be rejected by the order dated 22.10.1993. These two orders, passed below Exhibit-26 and in application dated 21.10.1993, are impugned in the present writ petition. Mr.Kankaria, learned counsel for the petitioner pointed out that the petitioner has filed independent suit bearing Regular Civil Suit No.80 of 1992 challenging the sale deed dated 16.8.1991, referred to in Exhibit-26 application, and the said suit is pending for disposal. He further submitted that the petitioner do not admit the so called compromise as referred to in Exhibit-26 and according to the petitioner, the respondent got executed the sale deed dated 16.8.1991 referred to in Exhibit-26 by practising fraud. He specifically

contended that the petitioners do not admit the contents of Exhibit-26. Against this backdrop Mr.Kankaria, learned counsel for the petitioner fairly stated that the petitioner may be permitted to withdraw the instant petition with liberty to the petitioner to raise all the contentions in respect of the so called compromise and sale deed dated 16.8.1991 executed in pursuance thereof, as reflected in Exhibit-26, in their Regular Civil Suit No.80 of 1992. Mr.Rajeshirke, learned counsel for the respondent fairly stated that he has no objection for allowing the petitioner to withdraw the instant writ petition and prosecuting his independent suit bearing Regular Civil Suit No.80 of 1992 further. Keeping in view the overall facts and circumstances of the case and considering the submissions of learned counsel appearing for the parties I am satisfied that the ends of justice would be met if the petitioner is allowed to withdraw this writ petition with liberty as prayed for. Order accordingly.

(D.B.Bhosale, J.)